

LOS ANGELES FIRE DEPARTMENT



DOUGLAS L. BARRY
FIRE CHIEF

April 21, 2008

Board of Fire Commissioners
File No. 08-044 R1

TO: Board of Fire Commissioners

FROM: Douglas L. Barry, Fire Chief *DLB*

**SUBJECT: 2007 BRUSH CLEARANCE APPEALS AND APPOINTMENT OF
HEARING OFFICERS**

FINAL ACTION:	<input type="checkbox"/> Approved	<input type="checkbox"/> Approved w/Corrections	<input type="checkbox"/> Withdrawn
	<input type="checkbox"/> Denied	<input type="checkbox"/> Received & Filed	<input type="checkbox"/> Other

Recommendations: That the Board:

1. Approve the starting of the appeals process regarding the Noncompliance Fee and Brush Clearance costs from the 2007 Brush Clearance Season.
2. Approve the appointment of Janice Irving and David Shapiro as the designated Hearing Officers and Paula Petrotta as the Alternate Hearing Officer.

Summary:

The Fire Department has completed the removal of brush from properties that were not in compliance with the brush clearance requirements for the 2007 Brush Clearance Season. At this time, the City proposes to assess property owners for the cost to abate their property of a public nuisance. In accordance with the Los Angeles Municipal Code (LAMC), the property owners have received information regarding their rights to an appeal process. The Board of Fire Commissioners or its designee hears all Noncompliance and Brush Clearance appeals. In cases where Fire Department brush clearance contractors performed actual brush removal, additional levels of appeal are available to property owners by the Public Safety Committee and the City Council. Completion of this entire process must occur prior to August in order to place the tax assessment on the owner's property tax bill for all unpaid fees.

Traditionally, the Board of Fire Commissioners has opted to use Hearing Officers because of the large number of appeals and because of the strict time schedule that has to be adhered to in order to place an assessment on the owner's property tax bill. The Fire Department has developed a list of qualified individuals, who have current or previous experience in conducting administrative

hearings, which meet the Hearing Officer criteria. They are then selected on a rotational basis as required by the City Attorney. Potential Hearing Officers may request to be included on the list, provided they meet the requirements of the Fire Department's Policies and Procedures for Hearing Officers (Attachment 1). This year, the Fire Department has selected Janice Irving and David Shapiro as its Hearing Officers and Paula Petrotta as the Alternate Hearing Officer.

Findings:

On December 13, 2007, the Brush Clearance Unit of the Fire Department held its last contractor bid session for the 2007 Brush Clearance Season. Invoices setting forth the cost of abatement, Administrative Fee, and/or a Noncompliance Fee were mailed to property owners. A letter was included in the invoice informing the property owner if they wished to present evidence that shows cause why the property should not be assessed for the cost of abatement or not be assessed in the amount specified in the invoice, the Fire Department would scheduled them for a hearing.

Inspection Process

The Fire Department enforces the LAMC through a field inspection process. For properties found not in compliance with the LAMC during the initial inspection, a Notice of Noncompliance is issued indicating the violations found during the inspection.

A follow-up inspection is conducted and if the nuisance has not been abated, then a second notice is issued accompanied with a letter from the City Attorney. At this point, the property owner is subjected to a Noncompliance Fee.

A final inspection of the property is made to determine if the property owner has complied with the LAMC. If the property owner has complied, then a "Cleared-by-Owner" record is mailed to the property owner and no further action is taken. However, if the property owner has not complied with the LAMC to abate the fire hazard, the Fire Department will prepare a work order to have the property cleared by a private contractor, which is selected through a bidding process. The property owner is then billed for the clearance cost, plus an additional Administrative Fee for processing the contract.

Appeals Process

The Fire Department's appeals process utilizes two different formats as required by the LAMC. The Noncompliance Fee appeals are written appeals whereas the Brush Clearance appeals are verbally presented before Hearing Officers. Information regarding the appeals process for both forms of appeals is included with the invoice sent to the violators. The hearings are held at 6262 Van Nuys Boulevard, Van Nuys, California, Monday through Friday, 8:00 a.m. to 3:30 p.m.

Written Appeals

The written appeal is in the form of a questionnaire. The questionnaire is included with the Noncompliance Fee invoice. It is a simple questionnaire that requires that property owner to answer "yes" or "no" to about half of the questions and the other half require that they fill in some blank spaces. The written appeal is reviewed and the Hearing Officer makes a "Proposed Decision and Recommendation."

Generally, the Fire Department receives a larger number of Noncompliance Fee appeals than Brush Clearance Assessment Appeals with the average number of appeals being between 200 and 300 per year. The Board of Fire Commissioners' designee reviews the questionnaire and prepares a "Proposed Decision and Recommendation." The Board of Fire Commissioners has the authority to modify or rescind the fees or impose and require the owner to pay the fee. With regards to the Noncompliance Fee Appeals, the Board of Fire Commissioners' determination is final.

Verbal Appeals

The verbal appeal is presented before the Hearing Officer on the assigned date or a pre-determined alternate date. The property owner is given the opportunity to present evidence to show cause as to why the property owner should not be assessed for the cost of abatement or not be assessed in the amount specified in the invoice.

The Hearing Officer will consider the evidence and the report setting forth the cost of abatement and receive testimony from Fire Department personnel with respect to the existence of a nuisance and cost of abatement. After the hearing has been closed, the hearing examiner will prepare a report and proposed decision to be presented to the Board of Fire Commissioners. After reviewing the recommendation, the Board of Fire Commissioners still has the authority to modify or rescind the fees or impose and require the owner to pay the fee. The Board's recommendations are then forward to the City Council.

Appeal Documentation

The appeal documentation identifies and includes the name and mailing address of the owner and the specific parcel from which a fire nuisance was abated. The Hearing Officer will include his/her findings, conclusions, recommendations, and proposed decision in his/her report to the Council with respect to each parcel and whether the proposed assessment should be: (1) confirmed in the amount set forth in the invoice, (2) disallowed, or (3) confirmed in an amount less than set forth in the invoice. In each event, the Hearing Officer must give the reasons for his/her recommendation. All reports are due 14 days from when they were assigned to the Hearing Officer. See Attachments 2 and 3 for examples.

Hearing Officers

The Board of Fire Commissioners appoints the Hearing Officers as its representative for the appeals proceedings. The Hearing Officer must weigh and decide the pertinent facts and render a "Proposed Decision and Recommendation" that will be submitted to the Board of Fire Commissioners.

The Fire Department makes every effort to distribute the packages evenly among the Hearing Officers. There is no consideration made by the Fire Department as to which Hearing Officer will get which packages. It is dependent upon the availability of the Hearing Officer and the Fire Department as to the number of Hearing Officers used and their assigned workload.

The Fire Department adheres to a recent California Supreme Court decision, "*Haas v. County of San Bernardino*," which required the County of San Bernardino to conduct administrative hearings with non-City employees. Additional mandates of the case that were adopted were procedures for selecting, retaining, and rotating Hearing Officers.

The case mandated that when using Hearing Officers, each department must implement a process that avoids the appearance that the Hearing Officer may favor the City in hopes of obtaining future employment with the City. Based upon the Court's decision, the City Attorney prepared some methods that City departments may employ in their selection of Hearing Officers such as:

1. Appointing Hearing Officers for a set time period, with the provision that at the end of that time, their services will not be used for a set number of years.
2. The Fire Department may appoint hearing officers from a list of potential Hearing Officers who will hear cases assigned in a pre-ordained, rotational manner.
3. Departments where the number of cases is relatively small may hire one Hearing Officer for a specific time period that will be used for all cases for the term of service.

The Fire Department has taken steps to comply with the City Attorney by establishing a list of Hearing Officers that are assigned in a pre-ordained, rotational manner not to exceed two consecutive years of service at a time. The Fire Department has established policies and procedures for the Hearing Officers and they must weigh and decide the pertinent facts and render a Proposed Decision and Recommendation that will be submitted to the Board of Fire Commissioners for review and approval.

The Hearing Officers will be compensated on a per diem rate for Brush Assessment Appeals as follows:

- Hearing Officers are hired as 90-day emergency appointment under Civil Service Classification Code 1328 – Hearing Officers.
- The Hearing Officers are paid at a current rate of \$29.41/hour, based on Civil Service Classification Code 1328 – Hearing Officers.
- The average number of hours used to complete the appeals process is approximately 130 to 150 hours per Hearing Officer.
- The Hearing Officers are paid from a Salary, Wage account, which at the aforementioned rate, this annually translates into between \$3,823.30 and \$4,411.50 per Hearing Officer.
- Hearing Officers are required to complete two reports per hour and no more than 16 reports per day.

Based on the above criteria, the Fire Department is recommending the following three qualified individuals:

Janice Santos Irving – Currently holds a Doctorate of Business Administration Labor Relations from the University of San Francisco and has acted as an independent arbitrator for the Los Angeles Police Commission, the Los Angeles Police Board of Rights, and the National Associations of Letter Carriers. She was appointed as a Hearing Officer for the Fire Department last year.

David Shapiro – He is a practicing attorney with a private law firm and has been involved with Brush Clearance Unit as a Hearing Officer for several years. He was admitted to the State Bar of California in 1982. Mr. Shapiro has several years of experience serving as a Hearing Officer and Commission Hearing Examiner for the Fire Department, Police Department, and Employee Relations.

Paula Petrotta – She has served as the Executive Director of the Los Angeles Commission on the Status of Women from September 1992 to October 2007. She was responsible for formulating policies, programs, special projects, and legislation for adoption concerning issues addressing the needs and problems of women in Los Angeles. Prior to this appointment, Ms. Petrotta served for more than a decade in the Mayor's Office (Tom Bradley), where she was the liaison for the Fire Department, Library, and Convention Center.

Conclusion:

The Brush Clearance Unit is prepared to handle all associated administrative responsibilities necessary to complete the 2007 Brush Clearance Appeals. If the Board wishes to avail themselves of the services of Janice Irving, David Shapiro, as the designees, and Paula Petrotta as the Alternate Hearing Officer, the Fire Department will proceed with the necessary arrangements.

Board report prepared by Robert L. Knight, Captain II, Brush Clearance Unit.

Attachments

**FIRE PREVENTION AND PUBLIC SAFETY- BRUSH CLEARANCE UNIT
POLICIES AND PROCEDURES FOR HEARING OFFICERS
Classification Code: 1328**

INTRODUCTION:

The City of Los Angeles Fire Department, Brush Clearance Unit is seeking qualified Hearing Officers who will be responsible for conducting an impartial hearing pertaining to facts presented by the Fire Department and property owners. They will be responsible to determine whether the Fire Department has met its obligation to provide the property owner with due process in the Brush Clearance process.

The Brush Clearance Unit is responsible for enforcing compliance of the Hazardous Vegetation Laws. Beginning in May of each year, approximately 130,000 land parcels identified in the Very High Fire Hazard Severity Zones are inspected by the Brush Clearance Task Force.

SCOPE OF RESPONSIBILITIES:

The Board of Fire Commissioners appoints the Hearing Officers as its representative in the appeals proceedings. The Hearing Officer must weigh and decide the pertinent facts and render a Proposed Decision and Recommendation that will be submitted to the Board of Fire Commissioners.

The Hearing Officer should have the following experiences and abilities:

- Must have two-year experience as participant in administrative hearings with public entities.
- Must be familiar with Los Angeles Municipal Codes §57.03.05 and §57.21.07
- Ability to interpret those codes and delivers a ruling on both weed abatement verbal appeals and the noncompliance written appeals.
- Ability to review County Assessor maps, determine property boundaries and interpret how they relate to Brush Clearance requirements.
- Must be able to look at photographs and identify fire hazards on said property
- Decides whether the appellant is liable or not liable for payment of fines or assessments after evaluating the evidence in accordance with municipal codes.
- Must be familiar with Brush Clearance process and documentation.

- Must have a laptop computer available to use during the proceedings and be familiar with MicroSoft Word.
- Must submit written reports within two-weeks at the conclusion of Brush Clearance Assessment hearings and/or after the Noncompliance Fee Appeals.
- Must partake in a two-day orientation session.
- Every Hearing Officer is expected to maintain the highest standard of professional decorum. To that end, Hearing Officers shall give their full attention to the proceedings.

ORIENTATION AND TRAINING

Perspective Hearing Officers will be required to attend a two (2) day orientation and training.

1. The first day will be devoted to the Los Angeles Municipal Codes requirements and application.
2. The second day will consist of a mock Brush Clearance Assessment Appeal and there will be "Question and Answer" segment.

COMPENSATION:

1. The Hearing Officer is compensated on a per diem rate for Brush Clearance Assessment Appeals as follows:
 - Hearing Officers are paid at the same rate as a Management Analyst I.
 - The Hearing Officer is paid on a hourly rate
 - Hearing Officers are required to complete two reports per hour and no more than 16 reports per day. The reports are paid on hourly rate

When assigning Noncompliance Appeals, the Brush Clearance Unit will make every effort to distribute the work evenly among the Hearing Officers. However, for the Brush Clearance Assessment Appeals, only two Hearing Officers will be randomly chosen from the pool of Hearing Officers. The two Hearing Officers will presided over the verbal hearings and prepares the reports. All reports are due 14-days from when they were assigned.

REPORTS

The Brush Clearance Unit has developed a standard template to be used by the Hearing Officer. The template is downloaded onto a 3 ½ Floppy Disc. A template contains pertinent information related to the property such as the owner's name, mailing address, cited property address, Assessor's Parcel Number (APN), assessment amount, inspection dates and actions taken by the Fire Department.

The Hearing Officer will be responsible for completing the following sections of the template:

- Substance of Protest, and
- Proposed Decision and Recommendation.

If the property owner has more than one parcel, each parcel will have its own template. The Hearing Officer will complete the aforementioned sections and submit all reports on a specified due date.

TERMS

Based on a decision of the California Supreme Court, "Haas v. San Bernardino" the City Attorney has identified the following to be the best method to employ Hearing Officers by:

- The Department appoints Hearing Officers from a list of potential Hearing Officers who will hear cases assigned in a pre-ordained, rotational manner.
- The Department will interview and select a sufficient number of Hearing Officers to be approved by the Board of Fire Commissioners.
- The Hearing Officer will be retained on the list for an indeterminate number of years.
- The Hearing Officer(s) is randomly chosen to preside over the appeals process in a given year.
- The Hearing Officers can serve one-two year term before they are rotated out.
- The Hearing Officer's name will be removed from the list of names for a one-year period before they will be allowed to preside over a future appeals process.
- Workload will be given to the Hearing Officers at random depending upon the Hearing Officer availability and the Department's appeal deadlines.

DISTRIBUTION OF CASES

There are two types of cases the Hearing Officer will review and render a proposed recommendation. The first is the Noncompliance Fee Appeal, which is written appeal and the second is the Brush Clearance Assessment Appeal, which is a verbal presentation by the property owner.

The Fire Department receives and accepts a constituent's appeal. The appeals are then packaged and placed in Assessor Parcel Number (APN) order. The Fire Department makes every effort to distribute the packages evenly among of the Hearing Officers. There is no consideration made by the Fire Department as to which Hearing Officer will get which packages.

Noncompliance Fee Appeals:

Generally, the Fire Department receives a larger number of Noncompliance Fee Appeals than Brush Clearance Assessment Appeals with the average number of appeals average between 200 and 300 per year.

- Hearing Officers will receive a pre-determined number of written appeals.
- The number of Hearing Officers to be used will depend on the number of appeals received by the Fire Department.
- The appeals are batched together in APN order.
- The Fire Department makes every effort to give each Hearing Officer an equal number of appeals.

Brush Clearance Assessment Appeals:

The Brush Clearance Assessment Appeals average between 100 to 150 verbal appeals per year.

- No more than eight (8) cases are heard per day, with forty-five (45) minutes given per case.
- Each appellant is given one-half hour to present their case, which allows the Hearing Officer the remaining fifteen (15) minutes to prepare their basis for decision and recommendations.
- As with the Noncompliance Fee Appeals, the cases are first put in APN order. This is done only to minimize the time the inspector will need to be present for the hearings.

- Hearing Officers are randomly chosen to preside over the appeals. It is depended upon their availability and the Fire Departments timeframe.

EVALUATION PROCESS

The City may conduct evaluations of the Hearing Officer's performance during the term of the contract. As required by Section 10.39.2 of the Los Angeles Administrative Code, evaluations will be based on a number of criteria, including the quality of the service performed, the timeliness of performance, financial issues, and the expertise of the Hearing Officer's personnel assigns to the contract. A Hearing Officer who receives a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final City evaluation and allowed 14 calendar days to respond. The City will use the final City evaluation, and any response from the Hearing Officer, to conduct reference checks when awarding other personal services contracts.

**2006 NONCOMPLIANCE INSPECTION FEE
WRITTEN APPEALS**

HEARING DATE: April 12, 2007 Council District:
NAME: FITZGERALD, DANIEL
MAILING ADDRESS: 10131 CONSTELLATION BLVD
CENTURY CITY CA 90067
SITUS ADDRESS: V/L ON LA ROCHA
ASSESSOR'S I.D. NO.: 5576009055
ASSESSMENT: \$270.00

SUBSTANCE OF PROTEST

Daniel S. Fitzgerald, property owner, filed the 2006 Brush Clearance Noncompliance Fee Appeal Form. Mr. Fitzgerald received the Notices of Noncompliance, but does not indicate whether he received the City Attorney's letter. He states that 'this property was cleared as it has been for the last 5 years by the deadline'.

DEPARTMENT INFORMATION

- ◆ First Inspection performed on June 27, 2006
- ◆ Second Inspection performed on July 25, 2006
- ◆ Third Inspection performed on October 4, 2006
- ◆ Property required three inspections,
\$270.00 Noncompliance inspection fee assessed.

PROPOSED DECISION AND RECOMMENDATION

Impose and require the property owner to pay the noncompliance fee. The Fire Department record indicates that the property owner was not in compliance by the due date. Three inspections were required before the property was in compliance. Los Angeles Municipal Code, Section 57.03.05, Noncompliance Inspection Fees (B), states in part, "If the property is not in compliance at the time of the first re-inspection, then time involved in all subsequent re-inspections shall be chargeable as a Noncompliance Fee."

FITZGERALD, DANIEL
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The 2006 Brush Clearance Noncompliance Fee Appeal form filed by appellant indicates that the Notices of Noncompliance were received, but does not indicate whether the City Attorney's letter was received. However, the Fire Department record shows that the letter was mailed to the owner of record with the County Assessor and not returned to the Fire Department. According to City Administrative Code Section 57.03.05 (C), *service...shall be deemed to have been completed at the time of deposit with the United States Postal Service.* Therefore, appellant is presumed to have been properly served and thus provided due process.

Although appellant states that he cleaned the property as in previous years, the Fire Department record indicates that the property remained out of compliance during subsequent re-inspections.

Hence, the assessed fee is appropriate.

**REPORT AND PROPOSED DECISION
ON ASSESSMENT HEARING FOR
2006 BRUSH CLEARANCE**

HEARING DATE: April 17, 2007 PACKAGE NO.: 2006181024
COUNCIL DISTRICT:

NAME: LOHR-SCHMIDT, BERNDT

MAILING ADDRESS: PO BOX 3824
HOLLYWOOD CA 90078-3824

SITUS ADDRESS: V/L SW/OF 1687 WOODS DR

ASSESSOR'S I.D. NO.: 5556022033

ASSESSMENT: \$814

COST OF CLEARANCE	ADMINISTRATIVE FEE	TOTAL ASSESSMENT
\$500	\$314	\$814

SUBSTANCE OF PROTEST

Appellant Berndt Lohr-Schmidt stated that he purchased the property from the Los Angeles County Tax Collector through a sealed bid process, which began in June 2006. He said that the property was legally recorded in his name on October 31, 2006. Mr. Lohr-Schmidt stated that he did not receive any Notices of Noncompliance, but that he did receive an invoice from the Fire Department. He stated that he did not know Keith West, whose name appears on the Master Parcel Information Sheet.

Mr. Lohr-Schmidt was critical of the Fire Department brush clearance notification procedures, after which the Hearing Officer explained the basic inspection process to the appellant.

Mr. Lohr-Schmidt did not bring any documentation to the hearing. However, he requested and was provided relevant information from the Master Parcel Information Sheet, and other records, which he duly noted. The Fire Inspector also provided photographs of the property, which depicted the hazardous conditions that existed at the time of clearance.

Appellant also requested other information which the Hearing Officer did not consider relevant to his appeal and which was not provided.

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Toward the conclusion of the hearing, Mr. Lohr-Schmidt requested that the proposed assessment against him be removed. He inquired about further appeal rights, if he did not agree with the Hearing Examiner's recommendation(s); those were explained to him.

The Hearing Officer concluded the hearing when he believed all relevant information had been received from appellant and Fire Department staff.

DEPARTMENT INFORMATION

The Department issued an F-1308 Notice of Noncompliance on May 10, 2006. There was no record of an F-1307 Cleared-By-Owner Inspection Report on file; therefore, a Second Notice of Noncompliance and a City Attorney Hearing Letter was issued on July 30, 2006.

A work order was prepared and the property was posted on October 8, 2006. The property was subsequently contracted to a City Contractor and work was completed on November 1, 2006. Photographs are on file showing the condition of the property before, during and after clearance.

PROPOSED DECISION AND RECOMMENDATION

The proposed assessment against your property has been confirmed in the amount indicated on the Brush Clearance Noncompliance Invoice.

Appellant based most of his appeal on the fact that he did not receive any Notices of Noncompliance, but acknowledged that he did receive the invoice. The Fire Department record confirmed that the Notices of Noncompliance were mailed to the previous owner of the property.

However, appellant purchased the property at a tax defaulted property sale from the Los Angeles County Tax Collector. The City weed abatement charges for this property had already resulted in a lien. Weed abatement charges resulting in liens is not extinguished by tax sale (Los Angeles County booklet: Tax Defaulted Property Sale 2005 A, Liens That Are Not Remove by Tax Sale, pages 8-9). Therefore, the lien becomes the responsibility of the new owner.

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The Fire Department record further confirms that the property was posted with a Notice to Abate a Public Nuisance and Fire Hazard after the third inspection disclosed that the property remained out of compliance. The Fire Inspector and City contractor provided photographs, which depicted the hazardous conditions that existed at the time of clearance.

The Fire Department inspector confirmed that the appellant was the owner of record on October 31, 2006; the City contractor cleared the property on November 1, 2006. The total assessment due is \$814.